

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
Michael Huffington,)	
)	
Plaintiff,)	
)	
v.)	
)	
T.C. Group, L.L.C., The Carlyle Group,)	Civil Action No: 09-cv-11256
Carlyle Capital Corporation, Ltd., Carlyle)	
Investment Management L.L.C., and David)	
M. Rubenstein,)	
)	
Defendants.)	
_____)	

**DEFENDANTS' MOTION TO EXTEND TIME TO
RESPOND TO COMPLAINT TO SEPTEMBER 25, 2009**

Defendants TC Group, L.L.C., The Carlyle Group, and Carlyle Investment Management L.L.C. (hereinafter "TC Group") and defendant David M. Rubenstein (collectively, the "Defendants"), pursuant to Fed. R. Civ. P. 6(b)(1)(A), request an Order extending the time to respond to the Complaint to September 25, 2009. There is good cause for extending this deadline as follows:

1. On July 13, 2009, Plaintiff Michael Huffington filed a complaint seeking to recover damages stemming from losses allegedly incurred from his investments in Carlyle Capital Corporation, Ltd, a closed-end investment fund which invested in, among other things, residential mortgage backed securities, principally in high investment-grade related risk classes. The complaint includes claims under Mass. Gen. L. ch. 110A, § 410, for negligent misrepresentation, and under Mass. Gen. L. ch. 93A, § 11. See Complaint, Dkt No. 1, Ex. 1.

2. Process was not properly served on TC Group until July 21, 2009 (see Aff. of Service, Dkt No. 9) and was not properly served on Mr. Rubenstein until his counsel accepted

service on his behalf on July 29, 2009. See Letter from Van Kirk to Brown, dated 7/29/09, attached as Ex. A.¹

3. On July 28, 2009, Defendants filed their Notice of Removal of this action in the United States District Court for the District of Massachusetts. Pursuant to Fed. R. Civ. P. 81(f) and Mass. R. Civ. P. 4, TC Group's responsive pleadings are not due until August 10, 2009, and Mr. Rubenstein's responsive pleading is not due until August 18, 2009.

4. The allegations in the complaint raise complex issues of fact and law. As alleged by the Plaintiff, the case stems from the collapse of the market for mortgage-backed securities issued by the Federal Home Loan Mortgage Corp. and the Federal National Mortgage Association. It alleges claims for purported losses of \$20,000,000 under complicated statutory schemes and common law. Additional time is required for Defendants to fully and adequately respond to the complaint.

5. Pursuant to Local Rule 7.1(A)(2), undersigned counsel for the Defendants contacted counsel for the Plaintiff requesting his assent to extend the responsive deadline. Counsel for the Plaintiff indicated that the Plaintiff would agree to a 30-day extension of the filing deadline, but not until September 25, 2009.

6. That is not enough time to adequately respond to the numerous and complex issues raised by the complaint. Since the losses allegedly occurred in early 2008 and the Plaintiff did not file his complaint until July 2009, the Plaintiff had over one year to prepare his

¹ Plaintiff improperly attempted to serve defendant Carlyle Capital Corporation, Ltd. ("CCC") by delivering a summons and a copy of the Complaint to the offices of The Carlyle Group. However, CCC is currently in liquidation in Guernsey with a liquidator appointed to manage its affairs. The Carlyle Group has no control over CCC and could not accept service on behalf of CCC. In addition, as alleged by Plaintiff in his Complaint, Defendant "The Carlyle Group" is not an entity, but rather merely a "trade name for [Defendant] the T.C. Group." See Complaint ¶3, Dkt No. 1. Thus, there can be no effective service on "The Carlyle Group."

complaint. Defendants are requesting fewer than six extra weeks to perform necessary factual and legal research to respond.²

7. The purpose of this request is not to delay the proceedings. Indeed, the Defendants promptly removed this action from state to federal court. See Notice of Removal, Dkt. No. 1.

8. Several of Defendants' counsel have several pending deadlines and scheduling conflicts with other active matters and pre-planned vacations during August.

For each of these reasons, Defendants respectfully request that this Honorable Court extend the time to respond to the Complaint until and including September 25, 2009. A proposed Order is filed herewith.

² Defendants' request is consistent with the time frames for responsive filings in federal court. See Fed. R. Civ. P. 4(d)(1) & (3) (allowing parties 60 days to file responsive pleadings upon waiver of service).

Respectfully submitted,

TC GROUP, L.L.C., THE CARLYLE GROUP,
CARLYLE INVESTMENT MANAGEMENT .LL.C., and
DAVID M. RUBENSTEIN,
By their attorneys,

/s/ Michael B. Galvin

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August 4, 2009

CERTIFICATE OF SERVICE

I, William A. Haddad, certify that a true and correct copy of this Motion was filed through the ECF System on this 4th day of August 2009 and will be sent electronically to all counsel of record.

/s/ William A. Haddad
William A. Haddad

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Michael Huffington,

Plaintiff,

v.

T.C. Group, L.L.C., The Carlyle Group,
Carlyle Capital Corporation, Ltd., Carlyle
Investment Management L.L.C., and David
M. Rubenstein,

Defendants.

Civil Action No: 09-cv-11256

**[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION
TO EXTEND TIME TO RESPOND TO COMPLAINT TO SEPTEMBER 25, 2009**

The Court hereby allows Defendants TC Group, L.L.C., The Carlyle Group, and Carlyle Investment Management L.L.C., and defendant David M. Rubenstein (collectively, the "Defendants") Motion to Extend Time to Respond to Complaint to September 25, 2009. The Court Orders that Defendants' responsive pleading to the Complaint is due on or before September 25, 2009.

SO ORDERED.

The Honorable Patti B. Saris
United States District Judge

Dated: August __, 2009

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